IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1201 OF 2005

Anusaya Vasant Gawade & Ors. ...Appellants
Vs.
Ganesh Krishna Gawade ...Respondent

Mr.Sudhir Prabhu i/b Mr.D.H.Keluskar for the Appellants
None for the Respondent.

CORAM: A.S.OKA, J.
DATED: MARCH 29,2006.

P.C.:

1. Heard Advocate for the Appellants. The Appellants are the original Defendants. The Trial Court accepted the case of the original Plaintiff that the suit land was not the self acquired property of the husband of the Appellant No.1 and the Plaintiff had one half share in the suit property. The finding of the Trial Court has been confirmed by the Appellate Court.

2. The learned Counsel for the Appellants submitted that the agreement at Exh.77 is not proved in accordance with law of evidence. He submitted that the parties could not have led evidence contrary to the certificate under Section 32-M of the Bombay Tenancy and Agricultural Lands Act, 1947 issued in the name of Vasant, the deceased husband of the Appellant No.1. The learned Counsel for the Appellants lastly relied upon the alleged admission of the Witness No.1 Ganesh

examined on behalf of the original Plaintiff.

3. The Appellate Court has come to the conclusion that in the cross examination of the Appellant no.2 he admitted the signatures of his father Vasant on the documents at Exh.87 and 95. By comparing signatures on the said documents, the learned Judge has come to the conclusion that the agreement at Exh.77 is signed by the deceased Vasant which discloses that the suit property was not exclusive property of deceased Vasant. The Appellate Court has observed that though the Appellant No.2 had admitted the signatures of his father Vasant at Exh.87 and 95, later on he denied the fact that the said documents were bearing the signatures of his father. The Appellate Court has therefore disbelieved the evidence of the Appellant No.2.

4. In my view, there is no error in the said finding recorded by the Appellate Court.

5. The Appellate Court also noted that the challans produced at Exh.24 and 25 are consistent with the contents of the agreement at Exh.77. In view of this finding it is very difficult to find fault with the finding recorded by the Trial Court and the Appellate Court that the Plaintiff had one half share in the suit property.

6. Reliance placed by the learned Counsel for the Appellants on the alleged admission of the P.W.No.1 Ganesh will not help the Appellants. Only one sentence in the cross examination cannot be read in isolation. The witness in the cross examination denied that the deceased Vasant was the exclusive tenant of the suit property.

7. In view of the concurrent findings of fact recorded by the Courts below, no fault can be found with the said finding. Second Appeal is dismissed with no order as to costs.

Judge.